

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

FELICITO AVENDANO JIMENEZ,)	
)	
Petitioner,)	
vs.)	NO. CIV-17-1332-HE
)	
ATTORNEY GENERAL,)	
)	
Respondant.)	

ORDER

Petitioner filed this action seeking a writ of habeas corpus under 28 U.S.C. § 2241. In the petition he alleges that he is “being held under false pretense and false identity.” Doc. #12, p. 2. Consistent with 28 U.S.C. § 636(b)(1)(B) & (C), the matter was referred to Magistrate Judge Bernard Jones for initial proceedings. In his Report and Recommendation (“Report”), the magistrate judge concluded the petition is subject to summary dismissal under Rule 4 of the Rules Governing Section 2254 Cases.¹

The magistrate judge determined that the petition should be dismissed because the relief petitioner seeks regarding the conditions of his confinement is not available in a §2241 action² and Younger v. Harris, 401 U.S. 37 (1971) dictates that the court abstain from addressing petitioner’s habeas claims based on his extradition and pending

¹ As the magistrate judge noted, Rule 4 also may be applied to § 2241 petitions. Brennan v. United States, 646 Fed. Appx. 662, 665 n.5 (10th Cir. 2016), cert. denied sub nom., Brannan v. United States, 137 S.Ct. 695 (2017).

² The magistrate judge had advised petitioner he could assert his civil rights claims in a separate action and he was sent the necessary forms. See Doc. #4. Petitioner did not, though, file a § 1983 action.

prosecution. Petitioner failed to object to the Report. He thereby waived his right to appellate review of the factual and legal issues it addressed. Casanova v. Ulibarri, 595 F.3d 1120, 1123 (10th Cir. 2010); *see* 28 U.S.C. §636(b)(1)(C).

Accordingly, the court adopts Magistrate Judge Jones's Report and Recommendation. The amended petition is dismissed without prejudice. This order moots petitioner's application for leave to proceed *in forma pauperis* [Doc. #5]. The court also denies a certificate of appealability, as it concludes petitioner has not made "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

Dated this 24th day of April, 2018.



JOE HEATON
CHIEF U.S. DISTRICT JUDGE